

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009SP3347
)	EEOC NO.: N/A
<b>HISHAM MUGHRABI</b> )	ALS NO.: 10-0034
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Hisham Mughrabi's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>[1]</sup> of Charge No. 2009SP3347; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner filed a charge of discrimination with the Respondent on April 15, 2009. The Petitioner alleged in his charge that on November 26, 2008, Dick's Sporting Goods ("Retailer") denied him the full and equal enjoyment of its facilities and services because of his national origin, Jordan, in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act"). On December 22, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 19, 2010, the Petitioner filed this timely Request.
2. The Retailer is a sporting goods store that sells firearms. As such, the Retailer must adhere to guidelines set forth by the U.S. Department of Justice, Bureau of Alcohol Tobacco and Firearms ("ATF").
3. Pursuant to ATF regulations, all customers who wished to purchase a firearm from the Retailer were required to complete a form entitled "Firearms Transaction Record Part I—Over-the-Counter," also known as ATF Form 4473 ("Form 4473"). Question 11(a) of Form 4473 asked the following of the customer:

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<sup>[1]</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

“Are you the actual transferee/buyer of the firearm(s) listed on this form?

**Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.”**

4. The Retailer also maintained a Store Operating Manual (“Manual”), which provided guidance to the Retailer and its employees on how to identify “straw purchases.” The Manual stated that the person who completes F4473, i.e., Form 4473, must be the actual purchaser, and may not attempt to purchase a firearm for a “prohibited person,” i.e., engage in a straw purchase. The Manual stated that if the Retailer’s employee suspects a straw purchase is taking place, the sale must be declined.
5. On November 24, 2008, the Petitioner went to the Retailer and applied to purchase a rifle for deer hunting. Completion of the sale of the rifle could only occur after the Petitioner had completed Form 4473, and waited for 24 hours. The Petitioner paid for the rifle and ammunition, and two other items on November 24<sup>th</sup>.
6. In response to question 11(a) on Form 4473, the Petitioner checked “No.” By checking “No,” the Petitioner indicated that he was not the actual “transferee/buyer” of the rifle.
7. On November 25, 2008, the Petitioner returned to the Retailer’s store to complete his purchase of the rifle. The Retailer informed the Petitioner that the Retailer was prohibited from completing the rifle sale because the Petitioner had responded “No” to question 11(a) on Form 4473. The Retailer refunded to the Petitioner the previously paid purchase price of the rifle.
8. On November 26, 2008, the Petitioner and his friend returned to the Retailer’s store. The Petitioner returned the ammunition he had purchased on November 24<sup>th</sup>. The Petitioner also attempted to purchase a second firearm. The Retailer again refused to sell the Petitioner a firearm.
9. In his charge, the Petitioner alleged that on November 26, 2008, the Retailer refused him the equal use and enjoyment of its store. The Petitioner alleged that a sales associate had called him a “Jordanian” and had refused to serve him because of his national origin. The Petitioner contended that non-Jordanian customers were served by the Retailer.
10. The Retailer denied any national origin discrimination. The Retailer contended it did not sell the Petitioner a firearm on November 26<sup>th</sup> because it appeared the Petitioner was attempting to engage in a “straw purchase.”
11. In his Request, the Petitioner argues that the Respondent omitted significant facts. For example, the Petitioner contends that he had incorrectly answered “no” to question 11(a) on

Form 4473, and the Retailer did not permit him to correct his answer, even though it had permitted the Petitioner to correct an answer to a different question on Form 4473. The Petitioner states that the Retailer's sales associate did not inform him that the Retailer was refusing to sell him a firearm because of an error on Form 4473.

12. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence because the Retailer articulated a non-discriminatory reason for not allowing the Petitioner to purchase a firearm and there was no evidence that the Retailer's non-discriminatory reason was pretext for unlawful discrimination.

### **Conclusion**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D) (West 2010). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

The Commission finds no substantial evidence the Retailer denied the Petitioner service on November 26, 2008, because of his national origin.

In the first instance, the Retailer had engaged in a retail transaction with the Petitioner some two-days prior on November 24, 2008. At that time, the Retailer sold the Petitioner four items, including ammunition and a rifle, pending the 24-hour wait period and the verification of his answers to Form 4473.

The Petitioner's attempted purchase of the first firearm on November 24<sup>th</sup> failed only because on November 25, 2008, the Retailer discovered that the Petitioner had answered "no" to question 11(a) on Form 4473, thus indicating the Petitioner was not the actual buyer of the firearm. Pursuant to federal law, the Retailer was not permitted to complete the November 24<sup>th</sup> firearm sales transaction with the Petitioner.

Regarding the Petitioner's second attempt to purchase a firearm on November 26<sup>th</sup>, the Retailer stated it denied this purchase because it believed the Petitioner was attempting to engage in a "straw purchase." The Commission finds no substantial evidence this articulated non-discriminatory reason was a pretext for national origin discrimination. In fact, the Retailer did provide the Petitioner with service on November 26<sup>th</sup> when the Petitioner returned the ammunition he had previously purchased and the Retailer refunded the Petitioner.

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Based on the Petitioner's response to question 11(a) on Form 4473 just two days prior, there is no evidence the Retailer's stated reason for not allowing the Petitioner to purchase a second firearm on November 26<sup>th</sup> was a pretext for national origin discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and, Dick's Sporting Goods, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

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**HUMAN RIGHTS COMMISSION**

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**Entered this 28<sup>th</sup> day of July 2010**

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen